

# **EXHIBIT E**

1 UNITED STATES BANKRUPTCY COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

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4 In Re: ) Case No. SA08-15588-ES  
5 LBREP/L-SUNCAL MASTER I, LLC, ) Santa Ana, California  
6 Debtor. ) Wednesday, December 22, 2010  
7 ) 2:00 p.m.  
8 )

9 ORAL RULING RE: CONT'D HEARING  
10 RE: MOTION TO APPROVE AMENDED  
11 AND RESTATED COMPROMISE  
12 BETWEEN THE TRUSTEE, THE  
13 OFFICIAL COMMITTEE OF  
14 UNSECURED CREDITORS, AND  
15 LEHMAN COMMERCIAL PAPER INC.,  
16 IN ITS INDIVIDUAL CAPACITY AND  
17 AS ADMINISTRATIVE AGENT FOR  
18 THE 1ST LIEN LENDERS (ORDER  
19 GRANTING EMERGENCY MOTION FOR  
20 HEARING DATE ON REGULAR NOTICE  
21 ENTERED 9/20/10)

22 CONT'D HEARING RE: DISCLOSURE  
23 STATEMENT FILED BY ALFRED H.  
24 SIEGEL, CHAPTER 11 TRUSTEE,  
25 DESCRIBING CHAPTER 11 PLAN

18 TRANSCRIPT OF PROCEEDINGS  
19 BEFORE THE HONORABLE ERITHE SMITH  
20 UNITED STATES BANKRUPTCY JUDGE  
21  
22  
23  
24

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

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I N D E X

| EXHIBITS    | IDENTIFIED |
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1 SANTA ANA, CALIFORNIA WEDNESDAY, DECEMBER 22, 2010 2:00 PM

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3 (Call to order of the Court.)

4 THE COURT: All right. The SunCal matter.  
5 Appearances. I'll take the courtroom appearances first.

6 MR. SMILEY: Good afternoon, your Honor. Evan  
7 Smiley and Robert Marticello of Weiland, Golden, Smiley, Wang  
8 Ekvall and Strok appearing on behalf of the Chapter 11  
9 trustee, Alfred Siegel who is also the moving party.

10 MS. FINK: Good afternoon, your Honor. Jessica  
11 Fink of Cadwalader appearing on behalf of LCPI as  
12 administrative agent. I believe my colleague Andrew Troop is  
13 on the phone and with me is Yu Kim (phonetic) of Allen  
14 Matkins.

15 THE COURT: Telephonically. Mr. Van Durrer?

16 MS. JAIMEZ (Telephonic): Van is not going to be  
17 appearing. This is Kim Jaimez of Skadden, Arps on behalf of  
18 Gramercy Warehouse Funding I, LLC.

19 THE COURT: Very well. Let's see who's next.  
20 Kimberly Jaimez. I'm sorry you just made the appearance.  
21 I'm sorry. Mr. McKane?

22 MR. MCKANE (Telephonic): Good afternoon, your  
23 Honor. Mark McKane of Kirkland and Ellis on behalf of LBREP  
24 Lakeside SC Master I, LLC.

25 THE COURT: Ms. Narayan?

1 MS. NARAYAN (Telephonic): Good afternoon, your  
2 Honor. Tara Castro Narayan on behalf of Fidelity National  
3 Title Insurance Company.

4 THE COURT: Mr. Reiss? Mr. Reiss?

5 MR. REISS (Telephonic): I'm sorry your Honor, I  
6 was on mute. Daniel Reiss of Levene, Neal, Bender, Yoo and  
7 Brill on behalf of the official committee of unsecured  
8 creditors.

9 THE COURT: Mr. Rus?

10 MR. RUS (Telephonic): Good afternoon, your Honor.  
11 Ronald Rus and Joel S. Miliband of Rus, Miliband and Smith on  
12 behalf of SunCal Management.

13 THE COURT: Mr. Sims?

14 MR. SIMS (Telephonic): Good afternoon, your  
15 Honor. Gerald Sims on behalf of Fidelity National Title  
16 Insurance Company.

17 THE COURT: Mr. Steinberg?

18 MR. STEINBERG (Telephonic): Arthur Steinberg from  
19 King and Spalding on behalf of Lehman Commercial Paper, Inc.

20 THE COURT: Mr. Troop?

21 MR. TROOP (Telephonic): Good afternoon, your  
22 Honor. Andrew Troop from Cadwalder on behalf of the first  
23 lien lenders and their agent LCPI.

24 THE COURT: Mr. Zaro?

25 MR. ZARO (Telephonic): Good afternoon, your

1 Honor. David Zaro on behalf of the first lien lenders as  
2 administrative agent for the first lien lenders.

3 THE COURT: All right. I think that's everyone.  
4 I apologize for the delay. I often try to estimate how long  
5 it will take me to review everything, and some times I get  
6 that estimate and some times I don't. So, I do apologize.  
7 Fortunately, there are only four people that are actually in  
8 Court. Hopefully the rest of you have been able to multi  
9 task during the past hour. I do appreciate your patience on  
10 this.

11 As you all know, my tentative ruling for the  
12 hearing on this yesterday was to grant the motion, and I  
13 indicated at the hearing that I wanted to hear as much  
14 argument as possible, highlighting in particular the  
15 objections to the motion. In connection therewith, there was  
16 also cross examination of the moving party, Mr. Siegel, the  
17 trustee. So, since the hearing, I have read my notes from  
18 the hearing, as well as my notes which include not only the  
19 testimony but the extensive argument of counsel, the  
20 pleadings that have been filed.

21 I reread possibly for the 10th time A&C properties  
22 and wanted to be sure that before I rendered a decision on  
23 this I had fully reviewed and re-reviewed the positions and  
24 argument of the various parties. I'll give you the short  
25 answer first I guess so as not to keep anyone in suspense and



1 that is my ruling is to grant the motion with certain  
2 conditions.

3           One of the conditions is that the maximum credit  
4 bid be disclosed as a condition of approval, that is as the  
5 amended term sheet currently stands the maximum credit bid is  
6 to be determine within 10 days of the entry of the order  
7 approving the motion. After reviewing the argument and the  
8 testimony yesterday, one of the concerns that I had at the  
9 hearing, I questioned why this number could not be disclosed  
10 earlier rather than later or sooner rather than later, and I  
11 wasn't completely satisfied that I got a full response on  
12 that on why it could not be done sooner. So, that will be  
13 one condition of the approval of the motion.

14           Further, there is I believe it's paragraph T.  
15 This is under the section called certain rights and releases  
16 on termination event. I'll just read a portion of paragraph  
17 T:

18           "If a final order confirming the plan  
19           should not have been obtained by  
20           February 28, 2011 or such later date as  
21           may be mutually agreed upon by the  
22           trustee, LCPI and the creditors  
23           committee in no event to be later than  
24           March 31, 2011."

25 I just note parenthetically at the hearing that it was

1 indicated that that number would be adjusted or take into  
2 account the Court's schedule. Continuing on:

3 "Then (i) the first lien lenders  
4 immediately will be granted relief from  
5 stay to foreclose on the properties.  
6 Bankruptcy court will grant this relief  
7 upon the presentation of an order by  
8 LCPI, accompanied by a declaration  
9 signed by an authorized representative  
10 of LCPI confirming that a termination  
11 event has occurred. No party in  
12 interest, including without limitation  
13 the trustee or the creditors committee,  
14 shall be entitled to permit to challenge  
15 the presentation of the entry of the  
16 order granting LCPI relief from stay  
17 with respect to the properties except to  
18 the extent, or entry of the order  
19 granting except to the extent no  
20 termination event has in fact occurred  
21 or to be challenged or otherwise  
22 interfere with the foreclosure on the  
23 properties."

24 I will not approve the agreement with that language. If  
25 there is a termination event as defined in this section of

6

1 the agreement -- the first lien lenders may seek relief from  
2 the bankruptcy stay pursuant to applicable bankruptcy rules.

3 I want to be clear that with respect to the  
4 language that says -- so, in other words, the first sentence  
5 that says the first lien lenders will be granted relief from  
6 stay immediately. That first paragraph then will be deleted.  
7 That's the section that I'm not approving, but I am approving  
8 the right or recognizing their right to seek relief from  
9 stay. I'm also not modifying the earlier portion of the  
10 agreement that permits relief from stay to allow the  
11 recordation of a notice of default. I'm not -- this is  
12 independent of that. I'm focusing specifically on paragraph  
13 T(i).

14 I do not have a problem with the portion of the  
15 second sentence that says that the trustee and the creditors  
16 committee shall not be entitled to challenge the order  
17 pursuant to this agreement. However, I'm not going to  
18 approve language that would preclude any other party in  
19 interest. It is stated earlier in this agreement that is it  
20 not intended to effect the rights of third parties. In my  
21 view by including a party in interest may be heard to  
22 challenge a request for relief from stay that that would  
23 impact third parties, specifically under the local bankruptcy  
24 rules. A motion for relief from stay requires notice to  
25 junior lien holders.

1 Further, I cannot predict or speculate at this  
2 point as to whether at the time that any such event of  
3 termination would occur that there would not be an existent,  
4 a competing plan proponent. In my view, the competing plan  
5 proponent shall not be precluded from being heard on a motion  
6 for relief from stay. So, just to be clear then to the  
7 extent that this paragraph would permit immediate relief from  
8 stay without a noticed motion and would preclude anyone other  
9 than a party to the actual term agreement from appearing in  
10 accordance and as permitted by local bankruptcy rules and by  
11 law. I would not be approving that portion under this  
12 portion of the agreement.

13 Now, going to the more specifics of the ruling  
14 here and taking into account the ninth circuit's decision in  
15 In Re A&C Properties. The parties are all familiar with the  
16 holding of this case. I'm only going to quote some excerpts  
17 from the case to put my ruling into context.

18 "The purpose of a compromise agreement  
19 is to allow the trustee and creditors to  
20 avoid the expenses and burdens  
21 associated with litigating sharply  
22 contested and dubious claims. The law  
23 favors compromise and not litigation for  
24 its own sake. As long as the bankruptcy  
25 court amply considers various factors to

1 determine the reasonableness of  
2 compromise, the court's decision should  
3 be affirmed."  
4 In A&C Properties, the circuit court indicated that it needed  
5 to determine whether in that case the settlement entered into  
6 by the trustee was reasonable given the particular  
7 circumstances of the case. The court further noted that:  
8 "There must be more than a mere good  
9 faith negotiation of a settlement by the  
10 trustee. The court must also find that  
11 the compromise is fair and equitable.  
12 In determining the fairness,  
13 reasonableness and adequacy of the  
14 proposed settlement agreement, the court  
15 must consider the probability of success  
16 in the litigation, the difficulties, if  
17 any, to be encountered in the matter of  
18 collection, the complexity of the  
19 litigation involved and the expense and  
20 convenience and delay necessarily  
21 attending it. The paramount interest of  
22 creditors in proper deference to their  
23 reasonable views in the premises. The  
24 trustee has the burden of persuading the  
25 court that the compromise is fair and

1 equitable and should be approved."

2 In considering the A&C Properties factors, I did  
3 spend a lot of time reviewing the pleadings and the evidence  
4 submitted in support of the motion. In reviewing the  
5 probability of success in the litigation -- I'll start with  
6 reference to the opposition presented. There's vigorous  
7 argument by the objecting parties that the trustee in  
8 entering into this compromise arrangement was abandoning  
9 viable claims or claims rather than that the trustee had  
10 previously indicated were meritorious or viable, and had a  
11 potential value of somewhere in the neighborhood of  
12 \$300,000,000.

13 It's the view of the objecting parties that the  
14 trustee had not provided evidence sufficient to support his  
15 position that the challenges that the trustee felt in the  
16 face and litigating the estate claims against the first lien  
17 lenders were significant enough to warrant and justify and  
18 constitute a reasonable exercise of business judgment with  
19 respect to the terms of the compromise. In my review of the  
20 evidence and both the declaration submitted by Mr. Siegel, as  
21 well as deposition testimony, I don't think there is any  
22 question that Mr. Siegel believes that the estate claims have  
23 merit.

24 He has expressed, and vigorously in his own right,  
25 the uncertainty and difficulties that would be associated in

1 prosecuting those claims. I just want to read a little  
2 portion of his declaration where he states -- this is  
3 declaration filed October 18, 2010:

4 "While I believe the estate claims have  
5 merit, I recognize that litigation has  
6 risk and I may not prevail. The estate  
7 claims will be difficult and costly to  
8 prove as I must prevail on multiple  
9 complex issues of fact and law to  
10 prevail in the estate claims. LCPI  
11 vigorously disputes the allegations  
12 related to these and claims and believes  
13 it will prevail in the action on the  
14 estate claims. Due to numerous  
15 outstanding disputed issues, success on  
16 the estate claim is uncertain. For the  
17 estate claims to have value, I must  
18 succeed in defending against the LCPI  
19 stay relief motions which in the absence  
20 of a settlement, LCPI would continue to  
21 pursue. As LCPI is a debtor in its own  
22 bankruptcy case, any redress for LCPI's  
23 alleged misconduct would likely have to  
24 come from the cash on hand or the value  
25 on the property as opposed to payment of

1 money damages which is not possible if  
2 LCPI obtains stay relief and is able to  
3 foreclose. Uncertainty also exists  
4 regarding my ability to sell properties  
5 to a third party free and clear of liens  
6 over LCPI's objection. The likelihood  
7 that I will succeed on the motion to  
8 settle the properties free and clear of  
9 the first lien lender's liens and to  
10 deny the first lien lender's credit bid  
11 rights is uncertain. We'll overall  
12 likely have to succeed on the trustee's  
13 stay relief motion prior to attempting  
14 to sell the properties free and clear of  
15 LCPI's liens or denying LCPI's credit  
16 bid rights or the estates could be  
17 subject to sanctions for local violation  
18 of the automatic stay. Based on the  
19 initial hearing on the trustee's stay  
20 relief motion, it's far from clear how  
21 the New York bankruptcy court will  
22 ultimately rule in the absence of a  
23 settlement. There's a very real risk  
24 that the New York bankruptcy court could  
25 deny the trustee's stay relief which



1 will greatly limit alternatives to  
2 administering the Debtor's estates.  
3 Without the proposed settlement, I would  
4 also likely face continued objections by  
5 LCPI to the use of cash collateral to  
6 preserve the properties and/or to  
7 administer the estates. I will be  
8 forced to defend the appeal. The  
9 amended term sheet avoids the costs and  
10 risks associated with litigating the  
11 estate's claims, as well as the costs  
12 and risks associated with attempting to  
13 sell the properties to a third party  
14 free and clear of the first lien  
15 lender's liens, the ongoing disputes of  
16 use of cash collateral, defending the  
17 LCPI stay relief motions. If I were  
18 required to litigate each and every  
19 dispute with LCPI to conclusion, the  
20 estate could incur millions of dollars  
21 in professional fees and costs. In  
22 addition to the expense of risk,  
23 litigation of the estates disputes with  
24 LCPI would span two separate bankruptcy  
25 courts and in the end the estate's

1 opportunity to realize value from LCPI's  
2 asserted collateral could be lost. If  
3 the New York bankruptcy court denies the  
4 trustee's stay relief motion, the  
5 administration of debtors' cases will be  
6 paralyzed as I will be unable to move  
7 the debtors cases forward. Rather, I  
8 would likely be limited to simply  
9 seeking authority to use cash collateral  
10 to maintain the status quo. The amended  
11 term sheet establishes a frame work for  
12 the sale of the properties in the near  
13 future with the first lien lender's  
14 consent on the preservation of the  
15 properties in the meantime. The amended  
16 term sheet resolves numerous disputes  
17 thereby saving the estates substantial  
18 administrative expenses. The amended  
19 term sheet entitles the estates to \$5.7  
20 million dollars to administer the cases  
21 and preserve the properties. Of this  
22 sum, the estates are guaranteed \$3.7  
23 million dollars on the approval of the  
24 amended term sheet, even if the proposed  
25 plan is not confirmed. The amended term

1 sheet also provides estates with  
2 potential to recover significant cash in  
3 the future from the sale of the  
4 properties to the proposed plan to a  
5 third party or subsequently by the first  
6 lien lenders or from avoidance action  
7 recoveries."

8 With respect to the difficulty in collection, to  
9 the extent that the trustee assuming that the trustee  
10 prevailed in litigating the estate claims, collectability of  
11 any damages from LCPI is obviously complicated and  
12 potentially thwarted by the fact that it is in its own  
13 bankruptcy case. Assuming that the trustee would prevail in  
14 the litigation, in any litigation resulting in a judgment for  
15 damages essentially would have an unsecured claim against the  
16 estate of LCPI in its bankruptcy case, and recovery is at  
17 best uncertain at this point and likely to be minimal.

18 Collectability is not actually an issue with  
19 respect to the subordination matters assuming that the  
20 trustee could prevail on that matter. However, the trustee  
21 is also faced with the continuing possibility that LCPI could  
22 obtain relief from the bankruptcy stay as to the properties.  
23 I would note that notwithstanding the allegations that are  
24 set forth in the draft complaint prepared by the trustee, it  
25 is clear to the Court that any litigation of estate claims

1 would be difficult, complex and protracted. In other words,  
2 the arguments to the contrary notwithstanding nothing in the  
3 record suggests or persuades this Court that such litigation  
4 would be a "slam dunk."

5           With respect to the interest of creditors, the  
6 Court does note that the creditors committee supports the  
7 compromise. The Court also notes that obviously there is  
8 strenuous objection to the compromise by the objecting  
9 creditors. So, even if the Court finds that the compromise  
10 is in the best interest of creditors generally, the Court  
11 recognizes that it may not be at least in the view of the  
12 objecting creditors in the best interest of all creditors.  
13 Based upon the standards set forth in A&C Properties and  
14 other related cases, it seems this is not the charge of the  
15 Court, that is to ensure that the compromise is acceptable to  
16 all creditors of the estate.

17           In this case, I have reviewed all of the  
18 circumstances and I think that in determining whether this  
19 compromise is in the best interest of the estate and best  
20 interest of the creditors of the estates, I must necessarily  
21 take into account the complexity of the litigation. There's  
22 no dispute that the properties themselves are substantially  
23 under water. So, if there is to be distribution to unsecured  
24 creditors, the source of any distribution would have to come  
25 from the proceeds of litigation if I were to not consider the

1 compromise.

2           Given the complexity of the litigation of the  
3 estate claims, the uncertainty that would be occasioned by  
4 the complexity of the prosecution of those claims, the  
5 additional layer of the bankruptcy of LCPI, and the  
6 uncertainty as to the probability of success in such  
7 litigation. This, in my view, bears on whether or not this  
8 compromise is in the best interest of the estate. I should  
9 amend that to say estates plural.

10           The compromise provides for \$3.5 million dollars  
11 to the estate and this is from funds that would otherwise not  
12 be available to the estate. Another \$2,000,000 or so to  
13 preserve and maintain the properties pending plan  
14 confirmation. Also a portion of funds that are currently on  
15 deposit with the Yucaipa Valley Water District which I think  
16 is somewhere in the neighborhood of \$200,000. These are  
17 funds to which the estates would either not be entitled or  
18 would have to engage in extensive litigation in order to  
19 recover. For example, if the estates were to challenge the  
20 validity of the first lien holders liens.

21           Without doubt there are uncertainties associated  
22 with the settlement in terms of what will ultimately be  
23 realized or recovered for the estates, specifically the  
24 amounts that may be recovered from the sales of the  
25 properties that is an unknown at this point. However, absent

1 the agreement and absent extensive litigation challenging the  
2 validity of the liens of the first lien holders, the estates  
3 would not have realized any recovery at least on the sale of  
4 the properties absent the agreement. There's uncertainty as  
5 to the recovery on avoidance actions which the estate is  
6 sharing. However, there really isn't any way to quantify  
7 what those recoveries are likely to be since the variables  
8 and the contingencies it seems are extensive.

9 I recognize it's the position of the objecting  
10 creditors that the trustee, at least in the view of the  
11 objecting creditors, did not conduct the type of analysis  
12 that the objecting creditors believed was necessary. I think  
13 that given the totality of the circumstances that the trustee  
14 has satisfied his burden to show that the amended term sheet  
15 is reasonable, fair and adequate again under the  
16 circumstances.

17 I understand that there were a number of specific  
18 objections raised by the objecting creditors. Among them,  
19 and if I don't state one specifically you can assume that I  
20 found it unpersuasive and it's overruled. There's an  
21 argument that the compromise is effectively a substantive  
22 consolidation of the Debtors. I found this argument  
23 completely unpersuasive. Ultimately, there really is in my  
24 view no evidence to support that argument.

25 Again, there's a lot of focus on the draft

1 complaint and the valuation of the estate claims against LCPI  
2 of over \$300,000,000. I think that the trustee's position on  
3 that has been adequately -- was adequately addressed in the  
4 papers as to why notwithstanding what he believed to be the  
5 merit in those claims, that given the obstacles associated  
6 with the prosecution and recovery that the compromise is a  
7 reasonable solution.

8           There were objections concerning issues regarding  
9 California law, whether the settlement is in violation of any  
10 applicable California law. There was a reference to the  
11 proportionate liability. I reviewed that argument. I  
12 reviewed my notes regarding oral argument, and I did not find  
13 that argument persuasive or that it was really applicable  
14 under these circumstances. I also was not persuaded that  
15 there was a violation of the California anti deficiency  
16 statute. That was an argument.

17           There's also an argument that the term sheet was  
18 effectively a subrosa plan and, therefore, should be denied  
19 on that basis alone because it included terms that would not  
20 be subject to plan confirmation and all the protections and  
21 procedures associated with plan confirmation. I did spend a  
22 lot of time reviewing this issue because I recognized that  
23 the terms of the compromise are very detailed in terms of the  
24 treatment of the claim of LCPI and the first lien holders,  
25 distribution of certain assets, and so I read the term sheet

1 very carefully to make sure that this was not a situation  
2 where there's a violation of the Bankruptcy Code with respect  
3 to the process established for plan confirmation.

4 I wanted to be sure that with respect to parties  
5 that were not -- third parties that were not signators to  
6 this agreement that their rights were not being effected and  
7 I wanted to be clear about that because I understand that  
8 there are complex relationships. There's an inter creditor  
9 agreement that may or may not play into this but, again, my  
10 concern is not as to the relationship between the LCPI and  
11 certain of the other junior lien holders, second and third  
12 lien holders to the extent that their relationship is  
13 governed by the inter creditor agreement. I don't think  
14 there's anything in the term sheet and certainly it doesn't  
15 appear to be the intent of the parties to effect rights or  
16 responsibilities or claims relating to that inter creditor  
17 agreement.

18 There was one other matter. I'm not sure if this  
19 is a condition or perhaps this has already been addressed and  
20 agreed to by the trustee and that has to do with the issue of  
21 mechanics liens. It's my assumption that to the extent that  
22 there are mechanics lien, lien holders who may have rights  
23 that may be superior that they would maintain their priority,  
24 and that this amended term sheet would not effect or  
25 negatively impact those interests. The one aspect of the



20

1 amended term sheet which I felt might impact on third parties  
2 is as I addressed at the out set and that has to do with the  
3 automatic grant of relief and not allowing any party in  
4 interest to be heard with respect to relief from stay to  
5 permit foreclosure of the properties.

6 I think by modifying or conditioning approval upon  
7 a modification of that paragraph T that it will resolve that  
8 issue. I think one of the arguments possibly by the SunCal  
9 was that once this motion was approved that there would not  
10 be an incentive to proceed with plan confirmation because  
11 LCPI and first lien holders could just either credit the  
12 entire amount, keep the properties or the trustee thought it  
13 had an incentive to go forward with a plan in which case the  
14 properties would all be foreclosed on automatically, at least  
15 that's the way he'd operate it. Things would operate under  
16 the term sheet.

17 Certainly as the senior lien holders on the  
18 properties -- I shouldn't say senior lien holders. I'm going  
19 to call them first lien holders subject to because I don't  
20 want to assume there aren't any other mechanics liens that  
21 might come into play but this doesn't mean that LCPI would  
22 not be able to obtain relief from stay. I'm certainly not  
23 deciding that issue today. That's still a possibility even  
24 with the modification I noted. I just wanted to ensure that  
25 that process would proceed in ordinary course with the proper

1 notice and protections that are provided by our local  
2 bankruptcy rules.

3           You will also note that with respect to the relief  
4 from stay issue that I have not even gone so far as to say  
5 that LCPI could come in on an expedited basis. I do not want  
6 to pre-decide that. If they believe they have grounds to  
7 come forward and I'm just saying this. This is not part of  
8 my ruling. If they believe they have grounds to come on an  
9 expedited basis as any other creditor believes it has a right  
10 to do, they would again pursue that under the normal  
11 bankruptcy rules, but I'm not including that as part of the  
12 order that is providing them absolutely with a right to come  
13 in on an expedited basis and thereby pre-deciding how the  
14 motion will be presented to the Court.

15           There was a request for some special language to  
16 be put in the order. Quite frankly, I think that the  
17 language that appears in the term sheet which I think is  
18 reflected or essentially appears in Judge Peck's order  
19 granting the motion before the New York court in the LCPI  
20 bankruptcy that nothing in the amended term sheet is intended  
21 to effect the rights, if any, of second lien lenders other  
22 than LCPI's second lien lender, the third lien lenders other  
23 than LCPI's third lien lenders or any other person as defined  
24 in the -- I don't understand my own handwriting. You all  
25 know the name of this. It's the credit agreement dated

1 January 19, 2006. Except to the extent a person is a party  
2 to a term sheet.

3           There was also a request for a determination, this  
4 was from Lakeside, that the Court make a finding that  
5 Lakeside is not an "affiliate" within the meaning of this  
6 amended term sheet. That I'm not prepared to do. In other  
7 words, I'm not making a ruling one way or another on that  
8 issue. In sum, I find that the trustee has met the  
9 requirements for approval of the amended term sheet. Again,  
10 I've considered the objections of each of the objecting  
11 creditors and except to the extent that the conditions I have  
12 stated for approval addresses any particular objection of the  
13 objecting creditors, such objections and each of them are  
14 expressly overruled.

15           Also, as a point of clarification with respect to  
16 the maximum credit bid, the purpose of requiring that the  
17 maximum credit bid be determined and disclosed again for  
18 disclosure purposes not as a basis for further argument  
19 regarding the merits of the motion. In other words, if the  
20 maximum credit bid is the maximum amount of the claim that  
21 was \$230,000,000 that's what the parties have agreed to,  
22 that's what it is but everyone knows that that's what it is.  
23 Also, I think that it's important in the event that any party  
24 wishes to appeal this decision that that fact be known and  
25 would be presented as part of any appeal.

1 Perhaps the simplest way to handle that maximum  
2 credit bid would be to simply include it in the order  
3 granting the motion. Any questions?

4 MR. STEINBERG: Your Honor, this is Arthur  
5 Steinberg. I'm in no -- because I'm not in the courtroom  
6 whether anybody else has questions but I did have two  
7 comments. One is the disclosure statement was held until the  
8 settlement would be considered. So, if your Honor would  
9 entertain and tell us how to entertain an order approving the  
10 disclosure statement for purposes of it being disseminated  
11 and --

12 THE COURT: I have a confirmation schedule. I  
13 just hadn't gotten to the disclosure statement yet.

14 MR. STEINBERG: I apologize.

15 THE COURT: I mean I haven't posted it but I have  
16 a proposed schedule. I wanted to finish this part.

17 MR. STEINBERG: Okay and the other thing is just  
18 procedure, and I'm sure people will comment about how to give  
19 you an order that memorializes your ruling that you be  
20 prepared to entertain whether we settle it or how to present  
21 it.

22 THE COURT: Well, my findings of fact and  
23 conclusions of law are as I stated them on the record. Any  
24 order should be presented that is consistent with the same.

25 MR. STEINBERG: I'm sure trustee's counsel will

1 talk.

2 THE COURT: Yes, and to avoid hopefully any  
3 controversy or to reduce the likelihood of controversy over  
4 the form of the order, because this comes up some times,  
5 except with respect to a couple of modifications that I noted  
6 on the record, I really don't have a problem adopting or  
7 including as findings to the extent the moving party thinks  
8 necessary, the motion and reply. The reason I say that is  
9 some times when the finding -- if parties submit findings of  
10 fact and conclusions of law, the moving party might submit  
11 findings that mirrors things that are stated in the motion  
12 but may not have been specifically stated by me on the  
13 record, and then it creates a conflict as to whether I made  
14 that finding or I didn't. So, to hopefully stream line  
15 things to the extent that the moving party includes findings  
16 or conclusions that are in the motion and reply so long as  
17 they are not inconsistent with anything I've stated on the  
18 record. That would be acceptable.

19 MR. RUS: Your Honor, this is Ronald Rus. Can I  
20 ask the Court a question?

21 THE COURT: Yes.

22 MR. RUS: Will you entertain a stay pending appeal  
23 or -- I mean if you will obviously you would make -- but if  
24 you won't entertain it I would just assume not have to take  
25 that step.

1 THE COURT: Are you asking if I would entertain an  
2 oral motion for a stay pending appeal?

3 MR. RUS: Well, I guess in the first instance yes.

4 THE COURT: And the first instance no. I mean my  
5 answer is no.

6 MR. RUS: Okay.

7 THE COURT: But, if you're asking whether I would  
8 entertain an application or ex parte application for an order  
9 stay pending appeal, you know, it's not a matter of me  
10 entertaining it. If one is filed, I have to review it.

11 MR. RUS: I guess the point is upon the entry of  
12 the order the way the compromise is worded any basis for  
13 opposing relief from stay is essentially eliminated upon 10  
14 days after entry of the order unless there's a stay.

15 THE COURT: I'm not following you. Which  
16 paragraph are you reading from?

17 MR. RUS: The releases become effective upon a  
18 final order and a final order is defined as 10 days after  
19 your entry of the order unless there is a stay. So, if the  
20 releases are effective 10 days after entry of your order, any  
21 basis for any party to oppose relief from stay is essentially  
22 eliminated.

23 THE COURT: Then, I suppose you'll have to seek a  
24 stay or file an appeal.

25 MR. RUS: Well, the appeal won't do it is the

1 point I was making.

2 THE COURT: Well, then you'll have to seek a stay  
3 pending appeal.

4 MR. RUS: Okay. Thank you.

5 THE COURT: You only get a stay if you're going to  
6 appeal, right?

7 MR. RUS: Correct.

8 MR. MCKANE: Judge Smith, it's Mark McKane. Can I  
9 get a point of clarification? You referenced that the  
10 language in Judge Peck's order regarding third parties. Are  
11 you asking that that language be expressly incorporated in  
12 your order? That was an issue you raised in oral argument,  
13 and I know you touched on it today but I'm not certain I  
14 understand if you want that expressed language included. I  
15 thought you did.

16 THE COURT: Hold on. Let me see if I can find it.  
17 The language that I read from Judge Peck's order which is  
18 Exhibit 14 to the declaration of Joshua Hurwit is taking  
19 verbatim from the actual amended term sheet, and that's what  
20 I read. In other words, if you look at Judge Peck's --

21 "Notwithstanding anything to the  
22 contrary. Nothing in the amended terms  
23 is intended to effect the rights."

24 Is that what you were referring?

25 MR. MCKANE: Yes, I'm referring to the first full

1 paragraph of the last page of Judge Peck's order.

2 THE COURT: Yes, and he got that language directly  
3 from the amended term sheet. If you look at the term sheet,  
4 page three, paragraph B I believe it's the last sentence,  
5 last full sentence.

6 MR. MCKANE: Your Honor, respectfully I think that  
7 he goes farther because he says of any person including the  
8 second and third liens whereas the term sheet does not say  
9 any person. I understand your direction. You're not willing  
10 to determine what kind of person I am. Am I an affiliate or  
11 a third party --

12 THE COURT: We don't have to argue about that. I  
13 don't mind having that language in there. That language is  
14 fine.

15 MR. MCKANE: Thank you, your Honor.

16 MR. RUS: Your Honor, this is Ronald Rus again.  
17 Can I ask another question?

18 THE COURT: Yes.

19 MR. RUS: I'm just trying to get some idea of the  
20 timing of the order given where we are and the holiday  
21 season. So, I guess we haven't seen the order yet. So, I  
22 guess an order is going to be crafted and it will have in it  
23 the bid information. Can you give us any sort of a feel on  
24 seven days after lodging so we can figure out what our timing  
25 is?



1 THE COURT: Because it's a contested matter,  
2 unless I have an indication that the objecting parties have  
3 signed off on the form of the order, I would hold it for  
4 seven days. By the way, apparently it was always my  
5 assumption the lodge period was seven court days, but on  
6 closer review of the rules it could be a change. I don't  
7 know. It's seven calendar days.

8 MR. RUS: Will the Court, you your Honor, be here  
9 during that entire time or --

10 THE COURT: It doesn't matter if I'm here or not  
11 because I have access to the network from home.

12 MR. RUS: Well, the issue I have is --

13 THE COURT: So, in other words there will be a  
14 notation here that when the order comes in it would be marked  
15 as urgent, and what typically happens on a matter like that  
16 is even if it's being lodged for seven court days if I see  
17 it's an urgent order, I will review it. I'll make my own  
18 determination as to whether it's consistent or not and I'll  
19 make notes either stating that if no objection is filed the  
20 order is okay or -- but I just wait to see whether or not an  
21 objection is going to be filed.

22 MR. RUS: Okay and I guess I don't understand why  
23 this particular order would be urgent since they anticipate  
24 things to happen in April.

25 THE COURT: Urgent meaning I would review it as

29

1 soon as possible. In other words -- because if you've got  
2 seven calendar days to file an objection, I would be  
3 monitoring to see whether or not an objection was actually  
4 filed. So, putting the urgent what it does is it puts me on  
5 my radar basically earlier.

6 MR. RUS: Okay. I guess what I was really  
7 addressing more is your availability on an ex parte  
8 application for a stay of the order because if that's not  
9 granted then I have an even shorter period of time to seek a  
10 stay from a higher court.

11 THE COURT: Well, yes and no. It depends. It  
12 depends on what you say in your motion. It depends on when I  
13 review it. There are a number of possibilities. One, I  
14 could deny it outright. Two, I could grant it. Three, I  
15 could grant it on some limited basis meaning grant a  
16 temporary for a 14 day stay to permit you to seek a stay in  
17 an appellate court. So, I mean there's no like one answer to  
18 what would happen.

19 MR. RUS: Thank you.

20 THE COURT: All right. I'm going to move on to  
21 the disclosure statement in just a moment.

22 All right. Moving onto the disclosure statement.  
23 I understand there is a further objection filed by Von  
24 Safeguard. Has that matter been resolved?

25 MR. SMILEY: No, your Honor.

1 THE COURT: Who's appearing for Von Safeguard?

2 MR. SMILEY: It was Mr. Broker's firm.

3 THE COURT: Right.

4 MR. SMILEY: We did propose language that we  
5 believe preserved everyone's rights as part of the amended  
6 revisions to the disclosure statement.

7 THE COURT: All right. In the proposed  
8 language -- okay I see it there. All right. This was not  
9 agreed to by Mr. Broker?

10 MR. SMILEY: No, your Honor. My understanding is  
11 Mr. Broker's client wanted the trustee to commit to a  
12 position.

13 THE COURT: I think the language covers the issue  
14 from a disclosure stand point. I would find the paragraph on  
15 page two, lines 11 through 15 to be adequate. I think the  
16 other issue regarding the substantive consolidation has been  
17 previously addressed at the prior hearing. So, I'm not going  
18 to make any further rulings on that. In terms of a tentative  
19 schedule, the tentative schedule is to set a confirmation  
20 hearing date of April 1 which is a Friday, and April 8 as a  
21 reserved over flow date which is the following Friday  
22 commencing at 10:00 a.m.

23 MR. SMILEY: That works for me, your Honor.

24 THE COURT: The following proposed schedule of  
25 deadlines. The deadline to file the final version of the

1 disclosure statement January 7. Deadline to serve plan  
2 packages January 21st. Deadline to return ballots and to  
3 object to the plan February 18. Deadline to file ballot  
4 analysis and confirmation brief February 4.

5 MR. SMILEY: You mean March 4?

6 THE COURT: Yep, I sure do. I'm looking at March  
7 and saying February. Deadline to object to confirmation  
8 brief March 14. Deadline to reply to objection to  
9 confirmation brief. The failure to object to confirmation on  
10 March 4 -- I'm sorry let me go back. February 18 does not  
11 preclude one from objecting to the confirmation brief on  
12 March 14 just so you know.

13 MR. MCKANE: Your Honor, did you give a reply date  
14 after the objections? I know you gave March 14 as the  
15 objection date.

16 THE COURT: March 25 is the deadline to reply to  
17 any objection to the confirmation brief.

18 MR. MCKANE: Thank you.

19 THE COURT: If those dates work, then I will post  
20 them as I'm doing right now on the tentative ruling so that  
21 you can see them all.

22 MR. SMILEY: Your Honor, I don't think I  
23 understood your comment about the February 18th date. That  
24 was the date the ballots are due back.

25 THE COURT: That's correct. It's also the

1 deadline to file an objection to the plan, to the plan.

2 MR. SMILEY: Okay.

3 THE COURT: What I'm saying is some times -- and I  
4 realize this whole process is a little awkward. I don't  
5 always do it the same way every time. Some Debtor's counsel  
6 prefer to file a motion for approval of a -- for confirmation  
7 or something. There are different ways to do it but what I  
8 found is when the confirmation brief comes in -- because the  
9 confirmation has evidence in support of confirmation. There  
10 may be a creditor that has an issue with the evidence itself.  
11 So, while it may have rejected the plan but didn't file an  
12 objection, once it sees what the evidence is in support of  
13 confirmation there may be an issue with that. At the same  
14 time, someone may want to object to the plan but they may not  
15 file an objection to the brief or to the evidence. So,  
16 that's why it's sort of bifurcated that way.

17 MR. SMILEY: I understand, your Honor. One other  
18 question. I believe the creditors committee, not to speak  
19 for Mr. Reiss, submitted a proposed letter to be included and  
20 I wanted to know if that was -- I don't know if that's been  
21 objected to. It was provisionally approved last time. I'm  
22 sorry.

23 THE COURT: Yeah, I thought I had already taken  
24 care of that.

25 MR. SMILEY: You're right, your Honor. I'm sorry.

1 THE COURT: Any questions regarding the disclosure  
2 statement or the plan confirmation schedule?

3 MR. MCKANE: No, your Honor.

4 THE COURT: All right. For the record, the  
5 disclosure statement is being approved whatever the current  
6 version is at this point, the first amended I guess with the  
7 modification noted on the record. Anything else?

8 MR. SMILEY: I don't believe so, your Honor

9 THE COURT: All right.

10 MR. SMILEY: Thank you very much for your time.

11 THE COURT: Everyone again, thank you for your  
12 patience. Everyone have a wonderful safe holiday.

13 (Proceedings concluded.)

14

15

16

17 I certify that the foregoing is a correct  
18 transcript from the electronic sound recording of the  
19 proceedings in the above-entitled matter.

20

21 /s/ Holly Martens \_\_\_\_\_ 1-13-11 \_\_\_\_\_  
22 Transcriber Date

23

24

25